

HOUSE BILL NO. 399.

Executive Office,
Auritt, Texas, May 2, 1905.

To the Secretary of State:

I disapprove and herewith transmit House Bill No. 399, entitled "An Act requiring railroad companies to construct switches and spurtracks; defining when it is an abuse not to connect; and requiring them to connect when ordered to do so by the Railroad Commission; providing the power of condemnation for said purposes; and giving the Railroad Commission power to require the construction of such connecting tracks, spurs and switches."

I give notice and proclaim that I object to this bill for the following reasons:

Section 1 of this bill requires railroad companies in this State, under such rules and regulations as may be prescribed by the Railroad Commission of Texas, to construct switches or spurtracks into private industries located on or adjacent to their lines of railway, sufficient and necessary to handle the business of such industries. This provision would authorize the Railroad Commission to compel railroad companies to build spurtracks to private industries for the use and accommodations of such private industries only, and without regard to their necessity for the public use; and Section 4 would authorize the condemnation of private property for such purpose. Railroads are "public highways," (Article 10, Section 2, Constitution.) It is by virtue of the public use for which they are constructed that railroad companies are empowered to condemn private property for their necessary use. They can not exercise this right of eminent domain for the condemnation of private property for the purpose of a railroad for private use. "Property is taken for public use as intended by the Constitution when there results to the public some definite right or use in the business or undertaking to which the property is devoted." (Borden vs. Irrigation Co., decided by our Supreme Court March 23, 1905.)

The construction of spurtracks to private industries as contemplated in Section 1 of this bill is not such a public use as would authorize the condemnation of private property therefor under the power of eminent domain conferred upon railroad companies. If the construction of switches and spurtracks "to private industries" is not such a public use or purpose as would authorize the condemnation of private property therefor, it necessarily follows that railroad companies could not be required to construct such spur-

tracks and switches. It is only in their capacity of common carriers, constructing and operating public highways for the use of the public, that railroad companies are brought under the control of the Legislature and of the Railroad Commission as an agency authorized by the Constitution.

By an Act of the Twenty-eighth Legislature, railroad companies were required to construct sidings and spurtracks sufficient to handle the business tendered such railroads, when ordered by the Railroad Commission. Under the provisions of this Act, the Railroad Commission ordered the St. Louis Southwestern Railroad Co. to construct a spurtrack from its road to the mill of the Angelina Lumber Co., "a private industry." The Commission was enjoined from enforcing this order by the District Court, and upon appeal the judgment was affirmed. (See 80 S. W. R., 102 and 1141.)

I do not believe that Section 1 of this bill can be enforced as a valid exercise of legislative power, nor can Section 4 in so far as it authorizes the taking of private property for the purposes specified in Section 1.

For these reasons, I veto this bill.

S. W. T. LANHAM,
Governor.